85-906

Supreme Court, U.S.
FILED
NOV 12 19
JOSEPH F. SPANIOL
CLERK

NO. - .

In the
Supreme Court of the United States.

October Term, 1985

In Re

ANTHONY R. MARTIN-TRIGONA,

Petitioner

Petition for Writ of Certiorari to the United States Court of Appeals for the Second Circuit

Anthony R. Martin-Trigona
P. O. Box 946
Lenox Hill Station
New York, New York 10021
(203) 287-8352

APPEALS PRINTERS BOSTON, MASSACHUSETTS

22 pp

QUESTIONS PRESENTED FOR REVIEW

1. May a federal court issue an injunction requiring a citizen of the United States to brand himself as "anti-semitic" as a price or precondition of access to any level of local, state or federal goverment in the United States?
2. May a federal court enjoin access to the Executive Branch of the federal goverment, or require conditions of disclosure concerning alleged "anti-semitism" before a person may communicate with the Executive Branch of goverment?
3. Does a federal court have the subject matter jurisdiction under Article III of the Constitution to issue an injunction running in favor of causes of action which do not yet exist, and persons who are not yet in existence, and over which the court lacks personal jurisdiction?
4. Does a federal court enjoy "supervisory powers" over every state court in the United States such that it can impose "informational" requirements on access to every state court in the United States?
5. Does a federal court have the power to suspend the right to appeal and to deprive a litigant of his statutory right to appeal?

PARTIES TO THE PROCEEDING

The parties to the proceeding before the district court were:

Petitioner Anthony R. Martin-Trigona;

Various federal officials sued in their official capacity and represented by the United States Attorney for Connecticut;

And Richard Belford, Richard Coan, Daniel Meister and Irving Perlmutter, who claim an interest as court appointees in petitioner's property and business.

Table of Contents

Questions Presented for Review	1
Parties to the Proceeding	1
Table of Contents	2
Table of Authorities	3
References to Published Reports	3
Grounds on which the Jurisdiction of the Court is Invoked	4
Statutes Involved	4
Statement of the Case	4
Basis of Jurisdiction in the Court of Appeals	6
Reasons for Granting the Writ	6
A.	
Preliminary Statement	6
B.	
A federal court may not punish someone that the court believes to be "anti-semitic"	7
C.	
A district judge in Connecticut has no supervisory power over cases and claims not yet in existence, persons not yet born, and unrelated proceedings in the state courts	9
D.	
A federal court of appeals may not suspend the right of appeal	9
Conclusion	10
End Notes	A-11

TABLE OF AUTHORITIES

Anti-Defamation League v. FCC, 403 F.2d 169 (D.C. Cir. 1968) 7
American Booksellers v. Hudnut, 771 F.2d 323 (7th Cir. 1985) 8
Cantwell v. Connecticut, 310 U.S. 296 (1940) 8
Collin v. Smith, 578 F.2d 1197 (7th Cir. 1978) 8
Cox v. Louisiana, 379 U.S. 536 (1965) 8
In Re Martin-Trigona, 573 F. Supp. 1245 (D. Conn. 1983) 4
In Re Martin-Trigona, 592 F. Supp. 1566 (D. Conn. 1984) 5
In Re Martin-Trigona, 737 F.2d 1254 (2d Cir. 1984) 4
In Re Martin-Trigona, 763 F.2d 140 (2d Cir. 1985) 5
In Re Martin-Trigona, 763 F.2d 503 (2d Cir. 1985) 6
National Socialist Party v. Ringers, 473 F.2d 1010 (4th Cir. 1973) 7
Near v. Minnesota, 283 U.S. 697 (1931) 7
United States v. Martin-Trigona, 756 F.2d 260 (2d Cir. 1985) 5
United States v. Martin-Trigona, 767 F.2d 35 (2d Cir. 1985) 5
United States v. Woodward, 755 F.2d 1389 (9th Cir. 1985) 8

REFERENCES TO PUBLISHED REPORTS

The original injunction in this case is reported as *In Re Martin-Trigona*, 573 F. Supp. 1245 (D. Conn. 1983); on appeal the original decision of the Court of Appeals is reported at 737 F.2d 1254 (2d Cir. 1984). The second injunction issued by the district court is reported at *In Re Martin-Trigona*, 592 F. Supp. 1566 (D. Conn. 1984), affirmed 763 F.2d 140 (2d Cir. 1985).

GROUNDS ON WHICH THE JURISDICTION OF THE COURT IS INVOKED

The judgment of the Court of Appeals was entered June 4, 1985 (A1 - A7). A timely petition for rehearing was denied on August 8, 1985 (A8). The statutory provision permitting this Court to review the judgment of the Court of Appeals is 28 U.S. Code § 1254 (1).

STATUTES INVOLVED

This case does not involve construction of any statutes. The proceedings below were permitted on the "inherent powers" of the federal courts.

STATEMENT OF THE CASE

In April, 1983, petitioner filed a federal civil rights suit alleging that the United States Bankruptcy Court for the District of Connecticut discriminated in favor of Jewish persons and against persons of the Christian faith. The complaint is reproduced in full at *In Re Martin-Trigona*, 737 F.2d 1254, at 1264 et seq. (2d Cir. 1984) ("Martin-Trigona II"). The suit was based on the fact that in a state with a Jewish population of approximately 3%, 100% of the bankruptcy judges were Jewish, almost 100% of the bankruptcy trustees were Jewish, and almost 100% of the "counsel" selected by Jewish trustees were Jewish attorneys. No ruling on the merits has ever been made on any of petitioner's claims in his original case.

In response, the United States District Court withdrew petitioner's "voluntary" bankruptcy proceedings from the bankruptcy court and transferred them to the district court.[1] The district court then issued a series of injunctions, culminating in an Order of Permanent Injunction, *In Re Martin-Trigona*, 573 F. Supp. 1245 (D. Conn. 1983) essentially banning petitioner from federal and state courts because of his "anti-semitic" views and pleadings.[2] Shortly thereafter, the district judge began a criminal contempt proceeding, alleging the injunction had been violated, and imprisoned

petitioner without bail. The district court's claims were ultimately found to be without merit, *United States v. Martin-Trigona*, 756 F.2d 260 (2d Cir. 1985) after petitioner had already been imprisoned for allegedly violating the injunction.

On appeal, the Second Circuit affirmed the injunction, and ordered that it be broadened, *Martin-Trigona II*. On remand, the district judge refused to hold any hearings, and expanded the injuction further, barring access to any level of government in the United States unless petitioner first attached to any governmental communication a long list of judicial opinions which had branded petitioner as "anti-semitic." *In Re Martin-Trigona*, 592 F. Supp. 1566 (D. Conn. 1984).[3] On appeal again, the Second Circuit, after lifting any criminal sanctions for communicating with the legislative branch but retaining them for communications with the Executive Branch of government, affirmed the injunction in Martin-Trigona III and warned the petitioner that he "acts at his peril" if he seeks to communicate with any level of state or federal government without first advertising himself and branding himself as "anti-semitic." *In Re Martin-Trigona*, 763 F. 2d 140 at 142 (2d Cir. 1985) *("Martin-Trigona IV")*.

Since Martin-Trigona I was issued in 1983, petitioner has been repeatedly imprisoned for allegedly violating the injunction, *United States v. Martin-Trigona, supra* (filing a new law suit in the District of Columbia); *United States v. Martin-Trigona*, 767 F. 2d 35 (2d Cir. 1985) (writing a letter denying ownership of property) and has been subjected to default judgments because he complied with the injunction.*In Re Martin-Trigona*, 763 F.2d 503 (2d Cir. 1985).

As noted in the appendix, all of this litigation has been generated by federal judges in a case where (I) the "voluntary debtor" does not live in the District of Connecticut, never filed any bankruptcy case in the District of Connecticut and does not wish to be a debtor in the District of Connecticut; (II) in a case where, after five (5) years of litigation, the creditors will recover *nothing* and court appointed bankruptcy officials claim *everything* which they have recovered, per the colloquy in the Appendix of this petition, at pages A9-A11 (Excerpt of Transcript of Hearing of September 3, 1985). The courts have

lavished hundreds of pages of opinions on a litigant merely because he has steadfastly refused the "protection" of the federal courts and has sought to avoid being a debtor in bankruptcy so that he may pay his creditors and litigate state law matters in the state courts. It must surely come as some shock to the members of this Court that "overworked" federal judges have published hundreds of pages of opinions and lavished years of attention on the affairs of a man who does not wish to be a "voluntary" litigant and has steadfastly refused to accept the benefits of the federal bankruptcy laws, and that as a result of this judicially created quagmire, creditors have (i) been stayed from enforcing their claims and (ii) will receive nothing after five years of litigation because (iii) "bankruptcy trustees" claim everything they have collected (Appendix at pages A9 - All).

BASIS OF JURISDICTION IN THE COURT OF APPEALS

The Court of Appeals had jurisdiction based on 28 U. S. Code § 1292 (1) (Martin-Trgona II) and 28 U. S. Code § 1291 (Martin-Trigona IV).

REASONS FOR GRANTING THE WRIT

A.

Preliminary Statement

It is important to stress at the outset what this petition does *not* involve. Federal courts have traditionally enjoyed the power to issue broadly based injunctions either (i) seeking to bar relitigation of issues litigated in those courts, in order to aid in enforcement of a judgment or (ii) seeking to enjoin other litigation which would interfere with property which is within the jurisdiction of the enjoining court. This petition does not question either of those principles.

There is not a scintilla of evidence in the record that petitioner has ever sought to either relitigate matters in a second tribunal once they were decided adversely to him in the first tribunal, or that he has sought to intefere with the jurisdiction of any court having control of property.

All of this litigation, and hundreds of pages of published opinions, have been triggered by the desire of federal judges to harass and punish petitioner because they perceive hime to be a "bad person" who is "anti-semitic."

B.

A Federal Court May Not Punish Someone That The Court Believes To Be "Anti-Semitic"

The entire thrust of Martin-Trigona I and II, and refinements adopted in Martin-Trigona III and IV is to "alert", 737 F. 2d 1263, persons and courts that petitioner is "anti-semitic." From 1969 through 1980 petitioner had been an active "public interest" litigant and sought to litigate a broad range of public interest cases. No one ever challenged his public interest litigation. It was only when petitioner filed a law suit charging religious discrimination in his bankruptcy proceedings that he was subjected to an avalanche of injunctions, imprisonments and other abuses and indignities.[4]

There has never been any hearing at which petitioner could reasonably present any evidence. In *Martin-Trigona I*, petitioner was denied any opportunity to call witnesses and to show that no one had suffered any injury and there was no basis for injunctive relief, see Martin-Trigona II at 737 F.2d 1258. Martin-Trigona III was decided withut any hearing at all. The district judge just acted in an inquisitional fashion and "enjoined" at will without hearing or, indeed, without any request that he act at all. Apart from a May, 1983 request that petitioner be enjoined from repetitive litigation, the United States has never requested any of the relief which has been granted. The clear import of *sua sponte* injunctions, underscored by the unusual publication of a verbatim complaint in *Martin-Trigona II* at 737 F. 2d 1264 was to punish petitioner for being "anti-semitic."

Petitioner denies being "anti-semitic." But even assuming *argudendo* that petitioner is "anti-semitic," every court in this nation has always held that anti-semitism is a constitutionally protected form of thought and speech. *Anti-Defamation League v. FCC* 403 F.2d 169 (D.C. Cir. 1968) (Burger, CJ); *Near v. Minnesota*, 283 U.S. 697 (1931); *National*

Socialist Party v. Ringers, 473 F.2d 1010 (4th Cir. 1973 (*en banc*); *Collin v. Smith*, 578 F. 2d 1197 (7th Cir. 1978) cert. den. 439 U. S. 916 (1978).

Yet, the Court of Appeals has upheld a *lifetime injunction* which requires petitioner to brand himself as "anti-semitic" by attaching copies of judicial opinions to any significant contact petitioner has with any level of local, state or federal government. The injunction speaks in sweeping terms of any contact at the federal level with prohibitions on "any new law suit, action, *proceeding* or matter in any federal court, *agency, tribunal, committee or other federal forum of the United States.*" 763 F. 2d 142. Even if petitioner had been convicted of a crime, a court could not order a convict to disclose his conviction, see *United States v. Woodward*, 755 F. 2d 1389 (9th Cir. 1985). Yet, petitioner, convicted of no crime, and guilty merely of arousing the judicial ire because he has steadfastly refused to be a "voluntary" debtor, is subjected to a "ban" and "Scarlet Letter" for life, under penalties of criminal prosecution. Yet it has always been a benchmark of constitutional adjudication in this and every other court that "One of the things that separates our society from theirs is our absolute right to propagate opinions that the government finds wrong or hateful." *American Booksellers v. Hudnut*, 771 F.2d 323, 328 (7th Cir. 1985). Indeed, to the extent that the original law suit sought to provoke comment on apparent religious discrimination in the bankruptcy court, it was consistent with prior decisions of this court, which have upheld the right to "invite dispute," *Cox v. Louisiana*, 379 U.S. 536, 551 (1965) and to "at times, resort to exaggeration , to villification of men who have been or are prominent in church or state, and even to false statement." *Cantwell v. Connecticut*, 310 U.S. 296, 310 (1940). Yet, the civil rights claims which triggered this litigation were objectively true and if the issue had been race or color rather than religion, would have been more than sufficient to state a prima facie case for discrimination.

With all due respect, the injunction was motivated by judicial spite, and cannot stand. Its continued existence insults the judiciary, not the petitioner.

C.

A district judge in Connecticut has no supervisory power over cases and claims not yet in existence, persons not yet born, and unrelated proceedings in the state courts.

The injunction imposes a lifetime restriction. If, in 20 years, petitioner should be involved in a car accident in Texas with a teenager, and sues the teenager for damages, he must comply with the injunction as a precondition of access to the Texas state courts *or face criminal prosecution in Connecticut.* The injunction operates in favor of claims and causes of action that do not yet exist, and persons who have yet to be born. A federal court cannot enter such an order consistent with the "case or controversy" requirement of Article III of the Constitution.

The Court of Appeals also found that it had the power to impose restrictions on access to the state courts because "a spirit of cooperative federalism calls upon us to alert state courts to Martin-Trigona's past activities . . ." 737 F.2d 1263. With due respect, this is utter nonsense. A federal court in Connecticut may not impose restrictions on access to a state court in California and *criminalize* noncompliance with those restrictions. Under the injunction, the United States Attorney in Connecticut has become the nation's first nationwide and unrestricted policeman. 592 F. Supp. 1575.

D.

A Federal Court of Appeals May Not Suspend the Right of Appeal.

Sua sponte, the Court of Appeals added its own injunction to that of the district court, and suspended petitioner's right to appeal any case where he was a plaintiff seeking affirmative relief, 737 F.2d 1264. The "preliminary injunction" has been converted into a permanent injunction because the Court of Appeals has refused to address the matter further.

A federal court which has statutory jurisdiction may not simply "enjoin" efforts to invoke its jurisdiction. Since the appellate injunction was entered, petitioner has never been allowed to appeal any adverse ruling of the district court where he sought affirmative relief. Property has been seized;

appeal was denied. Petitioner's former counsel were threatened with contempt; appeal was denied. Any and all cases where petitioner was a plaintiff or sought affirmative relief have been denied or dismissed without ruling on the merits.

A federal appeals court may not simply "enjoin" appeals and summarily bar a litigant from any appeal in any case where he is a plaintiff or seeks affirmative relief. The enjoining of access to the Court of Appeals was unprincipled, unprecedented and totally unconstitutional.

CONCLUSION

All of the proceedings in the courts below have been premised on one thought,namely that this court would not review the proceedings because petitioner herein is a "bad man" and not entitled to justice. No district or appellate judge would have entered the orders now before this court if he thought they would be reviewed on the merits by this court. Because of the bizarre nature of the orders now before this Court, and because they go to the heart of judicial restraint, and judicial respect for the Constitution, and because they implicate the supervisory role of this Court within the federal system, this Court is respectfully requested to grant the writ and to review the orders on the merits, and to vacate them.

Respectfully submitted,
/S/

ANTHONY R. MARTIN-TRIGONA

October 5, 1985

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

No. 962 — August Term, 1984

(Submitted: April 3, 1985 Decided: June 4, 1985)

Docket No. 84-7794

IN RE: ANTHONY R. MARTIN-TRIGONA,
Appellant.

ANTHONY R. MARTIN-TRIGONA,
Plaintiff-Appellant,

v.

HAROLD LAVIEN, ET AL.,
Defendants-Appellees.

ANTHONY R. MARTIN-TRIGONA,
Plaintiff-Appellant,

v.

WILLIAM F. SMITH, ET AL.,
Defendants-Appellees.

Before:

KAUFMAN, TIMBERS, and NEWMAN, *Circuit Judges.*

Appeal from a September 13, 1984, order of the District Court for the District of Connecticut (José M. Cabranes, Judge), upon remand from this Court, 737

F.2d 1254, issuing a revised injunction imposing restrictions on a *pro se* litigant's opportunity to file pleadings and other documents in federal courts and other forums, 592 F. Supp. 1566, and an April 23, 1984, ancillary order concerning files in the office of the District Court Clerk.

Injunction and ancillary order affirmed.

Anthony R. Martin-Trigona, New York, N.Y., submitted a brief for appellant *pro se*.

Robert E. Meshel, William K. Sanders, D'Amato & Lynch, New York, N.Y., submitted a brief for appellees Daniel Meister, Richard Belford, and Richard Coan.

Alan H. Nevas, U.S. Atty., and W. Philip Jones, Asst. U.S. Atty., Hartford, Conn., submitted a brief for the United States.

PER CURIAM:

This appeal returns to this Court the efforts of the District Court for the District of Connecticut to protect the adjudication process from the relentless efforts of a *pro se* litigant to disrupt the process by vexatious and harassing litigation. A year ago this Court substantially affirmed an injunction issued by Judge Cabranes barring Anthony R. Martin-Trigona from initiating litigation in federal courts except in compliance with specified conditions. *In re Martin-Trigona*, 737 F.2d 1254 (2d Cir. 1984). We remanded to the District Court for modifications of the injunction. Upon remand, the District Court, on September 13, 1984, vacated the original injunction and entered a new injunction, which is the principal

subject of this appeal. *In re Martin-Trigona*, 592 F. Supp. 1566, 1569-76 (D. Conn. 1984) (text of injunction). The appeal also seeks review of an ancillary order, entered April 23, 1984, concerning maintenance of files in the office of the Clerk of the District Court in connection with papers sought to be filed by Martin-Trigona. We affirm the September 13 order of injunction and the April 23 order concerning court files.

Our prior decision directed two basic changes in the original injunction. First, we determined that the requirement that Martin-Trigona seek leave of the court in which he wishes to file new actions should not apply to suits initiated in state courts; however, the requirement that Martin-Trigona append to his state court pleadings pertinent informational materials alerting state courts to his prior history of vexatious litigation was to be retained in the revised injunction. 737 F.2d at 1262-63. Second, because we narrowed the limitations upon litigation in state court, we instructed the District Court to include a new provision designed to afford protection against harassing litigation in any courts to litigants and their lawyers, families, and associates who have encountered Martin-Trigona in litigation in the District of Connecticut or this Court. *Id.* at 1263. We also made clear that our decision was not to be construed as limiting the power of the District Court "to prevent harassing and vexatious conduct by Martin-Trigona." *Id.*

The revised injunction complies faithfully with our prior decision. Though somewhat more elaborate and precise than the original injunction, the new injunction contains no provision that is not fully warranted in light of the litigation history of Martin-Trigona. We turn, then, to the specfic claims advanced on this appeal.

1. Martin-Trigona contends that the District Court lacked subject matter and personal jurisdiction to issue the injunction. The District Court's authority was explicitly upheld on the prior appeal. "Federal courts have both the inherent power and the constitutional obligation to protect their jurisdiction from conduct which impairs their ability to carry out Article III functions." 737 F.2d at 1261. The District Court acted with respect to litigation properly within its jurisdiction. *See In re Martin-Trigona*, No. 84-5040 (2d Cir. Apr. 8, 1985) (detailing Martin-Trigona's actions in initiating bankruptcy proceedings in the Southern District of New York, the subsequent transfer of those proceedings to the District of Connecticut, and Martin-Trigona's enjoyment of protection of the Bankruptcy Court from the claims of his and his corporation's creditors for several years).

2. Martin-Trigona contends that the scope of the revised injunction is too broad. He objects particularly to the phrasing of the provision requiring leave of the federal forum in which he wishes to initiate new litigation. That provision applies to the filing of "any new lawsuit, action, proceeding, or matter in any federal court, agency, tribunal, committee, or other federal forum of the United States." 592 F. Supp. at 1571. Martin-Trigona claims that this provision limits his ability to write a letter to his congressman. The contention is without substance. The injunction has no application whatever to the Legislative Branch. It is designed to place some reasonable bounds upon appellant's recourse to litigation in federal forums, and it properly defines those forums broadly to include not only federal courts but also federal agencies, tribunals, or committees in which adjudications might be sought. If a situation should arise where Martin-Trigona can represent in good faith that his effort to initiate a particular matter

in some federal forum ought not to be subject to the "leave-of-court" or the informational requirements of the injunction, he is free to apply to the District Court for exemption; in the absence of such an exemption, however, he acts at his peril.

Appellant also complains of the scope of paragraph VII of the injunction, 592 F. Supp. at 1573-74, the provision that prohibits him from initiating lawsuits or other matters in any federal, state, or local forum against persons or entities that have encountered him or had any connection with litigation involving him in the Bankruptcy Court or the District Court for the District of Connecticut or this Court. He particularly complains of what he alleges to be uncertainty created by the breadth of this provision to include relatives, friends, and associates of the judges, lawyers, and other officials listed in paragraph VII of the injunction. The breadth of this provision is fully warranted by Martin-Trigona's demonstrated propensity for making litigation a weapon to be turned upon not only the lawyers who oppose him and the judges who adjudicate his cases but also persons with no conceivable relationship to the subject matter of his lawsuits but who happen to be related or associated in some way with a person who has incurred his ire in the course of litigation. He has used this tactic to sue a judge's wife, to file a petition to become guardian of a judge's children, to sue a lawyer who moved the admission *pro hac vice* of an another lawyer and to sue the estate of the deceased father of a bankruptcy trustee. There is no substance to the contention that Martin-Trigona runs the risk of unwittingly violating this provision of the injunction when he might not know whether a particular individual he plans to sue is a relative or friend of a judge or lawyer whom appellant has encountered in pending or prior liti-

gation. This provision is obviously designed to prevent deliberate harassment; it is therefore to be construed with a *scienter* requirement so that Martin-Trigona is obliged to seek leave of the District Court in Connecticut, pursuant to paragraph VII of the injunction, only in those instances when he knows or reasonably should know that the person he intends to sue is within the category of persons covered by this provision.

3. Martin-Trigona makes a variety of other objections to the revised injunction, none of which warrants discussion. Many have been rejected on the prior appeal from the original injunction. All are entirely without merit.

4. Finally, Martin-Trigona seeks review of an order entered April 23, 1984, concerning the maintenance of files in the office of the Clerk of the District Court in connection with papers filed and sought to be filed by appellant. The order is designed to implement the procedure, established by the original injunction and carried forward by the revised injunction, by which Martin-Trigona is required to seek leave of the District Court in order to file various pleadings and other documents. The order directs the Clerk to maintain two folders entitled "Leave to Serve and File Granted" and "Leave to Serve and File Denied." When leave is granted, a copy of the document to be filed is kept in the first file; the original is returned to appellant so that service can be made. When leave is denied, the original document sought to be filed is kept in the second file.

Appellant specifically complains of the provision in the April 23, 1984, order stating that documents in these folders "shall not become part of the public record of these

consolidated proceedings." He contends that the District Court has removed papers from public scrutiny, contrary to the normal requirements of 11 U.S.C. § 107 (1982) (papers filed in cases under bankruptcy title are public records unless sealed because of confidential information or scandalous matter). This claim is frivolous. The order does not seal any document, nor in any way remove a document from public inspection. The order simply prevents the documents in the designated folders from becoming part of the public record *of the consolidated bankruptcy proceedings*, thus sparing the Clerk's office the burden of docketing the documents and sparing the litigants in those proceedings from being besieged with such documents unless and until the District Court has granted leave to permit their filing. The designated folders and their contents are available for public inspection in the office of the District Court Clerk. Of course, neither the April 23 order nor our approval of it should be construed to limit the authority of the District Court, for good cause in an appropriate instance, to place under seal a scurrilous document.

The April 23, 1984, order concerning files and the September 13, 1984, order issuing the revised injunction are affirmed. The mandate shall issue forthwith.

UNITED STATES COURT OF APPEALS

SECOND CIRCUIT

At a stated term of the United States Court of Appeals, in and for the Second Circuit, held at the United States Courthouse, in the City of New York, on the eighth day August one thousand nine hundred and eighty-five.

IN RE: ANTHONY R. MARTIN-TRIGONA,
ANTHONY R. MARTIN-TRIGONA,
Appellant.
No. 84-7794

****

ANTHONY R. MARTIN-TRIGONA,
Plaintiff-Appelant,
V.
HAROLD LAVIEN et al.,
Defendants-Appellees.

****

ANTHONY R. MARTIN-TRIGONA
Plaintiff-Appellant,
V.
WILLIAM F. SMITH, et al,
Defendants-Appellees.

A petition for rehearing containing a suggestion that the action be reheard in banc having been filed herein by *Anthony R. Martin-Trigona*

Upon consideration by the panel that heard the appeal, it is

Ordered that said petition for rehearing is DENIED.

It is further noted that the suggestion for rehearing in banc has been transmitted to the judges of the court in regular active service and to any other judge that heard the appeal and that no such judge has requested that a vote be taken thereon.

(stamp)
Filed Aug 8 1985

(signed)
Elaine B. Goldsmith
Clerk

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT
IN RE: ANTHONY R. MARTIN-TRIGONA MISC. CIV. H-83-62
ANTONIO SCHLEHAN
Plaintiff,
vs. MISC. CIV. H-83-11
OLYMPIC WORLDWIDE COMMUNICATIONS
Defendant,

SEPTEMBER 3, 1985
HARTFORD, CONNECTICUT

BEFORE:

HON. PETER C. DORSEY, U.S.D.J.

APPEARANCES:
For MR. MARTIN-TRIGONA:
Mr. Anthony R. Martin-Trigona,
Pro Se
P. O. Box 946
Lenox Hill Station
New York, New York 10021

FOR MR. BELFORD, TRUSTEE:
Richard Coan, Esq.
18 Trumbull Street
New Haven, Connecticut 06511
Gerald W. Rankin
Official Court Reporter

(Partial Transcript)

MR. COAN: Mr. Martin-Trigona has been denied a discharge. After this bankruptcy proceeding is over whatever happens to creditors will remain as debts and creditors will be free to pursue Mr. Martin-Trigona to satisfy the debts that he owes them.

THE COURT: How do we know for example, that cumulatively with all of the assets about which there may be some dispute particularly as far as liquidating any claims including compromising claims, that ultimately there might be an excess, maybe there won't be, maybe it's abundantly clear, maybe it will never happen but maybe the remote possibility that an excess of the assets over the liabilities might result in which instance it reverts to him, does it not?

MR. COAN: Well, Your Honor, we not only are extremely confident that there won't be an excess, in fact it looks like creditors will not receive a penny because administrative expenses will probably eat up whatever it is that we have been able to find.

As it is right now, taking into account some other properties that we expect to get, some other claims that we expect to obtain, we're talking about the relm of 100 to one hundred twenty thousand dollars at tops that we're going to get in. My fee, my administrative claim for fees has already been allowed in the amount of 112 thousand dollars and that was only taking into account time that I spent up until last

November which was approximately 11 hundred hours as of that time. I probably put in another three or four hundred hours in the past year. So that it's quite clear that administrative expenses will eat up whatever we found, we have no place else to turn for assets.

(WHEREUPON, there were further proceedings of record but not transcribed.)

End Notes:

1. For five (5) years petitioner has been held in bondage as a "voluntary" litigant even though he is most demonstrably not a voluntary debtor. He has been imprisoned for nearly eighteen (18) months because he refuses to be a "voluntary" debtor, in order to "coerce" him to become and perform the duties of a voluntary debtor. At no time during this mountain of litigation has petitioner ever sought the protections of the federal court in Connecticut. He is not now, nor has he ever been, a "voluntary" debtor. Nevertheless, the District of Connecticut continues to coerce petitioner to be a voluntary debtor, and to require petitioner, a Virginia resident, to be a debtor in Connecticut. This is not a case where petitioner sought out the courts. It can fairly be characterized as a case where the courts have literally sought out petitioner.
2. Hereinafter referred to as "Martin-Trigona I."
3. Hereinafter referred to as "Martin-Trigona II."
4. The claim that petitioner has filed "250 law suits" is false. It is simply untrue, and just an exaggeration and fabrication to justify the injunction.

No. 85-906

Supreme Court, U.S.
FILED
DEC 12 1985
JOSEPH F. SPANIOL, JR.
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1985

In Re:

ANTHONY R. MARTIN-TRIGONA,

Petitioner,

ANTHONY R. MARTIN-TRIGONA,

Petitioner,

-against-

HAROLD LAVIEN, *et al.*

Respondents.

ANTHONY R. MARTIN-TRIGONA,

Petitioner,

-against-

WILLIAM F. SMITH, *et al.*

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR RESPONDENTS IN OPPOSITION

D'AMATO & LYNCH
Attorneys for Respondents Daniel Meister, Richard Belford and Richard Coan
70 Pine Street
New York, New York 10270
(212) 269-0927

Of Counsel

ROBERT E. MESHEL
WILLIAM K. SANDERS

BEST AVAILABLE COPY

QUESTION PRESENTED

Whether district courts have the authority and power to enjoin vexatious litigants?

TABLE OF CONTENTS

	PAGE
QUESTION PRESENTED	i
TABLE OF AUTHORITIES	iii
RELEVANT STATUTE	1
SUMMARY OF ARGUMENT	2
ARGUMENT	2
1. PETITIONER FAILS TO SATISFY THE STANDARDS GOVERNING REVIEW ON CERTIORARI	2
2. DISTRICT COURTS HAVE THE AUTHORITY AND POWER TO ENJOIN VEXATIOUS LITIGANTS	3
CONCLUSION	4

TABLE OF AUTHORITIES

PAGE

Cases

Beacon Theatres, Inc. v. *Westover*, 359 U.S. 500, 79 S. Ct. 948, 3 L. Ed. 2d 988 (1954) 3

Green v. *Warden*, 699 F.2d 364 (7th Cir.), *cert. denied*, 461 U.S. 960, 103 S. Ct. 2436, 77 L. Ed. 2d 1321 (1983) 3

Matter of Hartford Textile Corp., 681 F.2d 895 (2d Cir. 1982), *cert. denied*, 459 U.S. 1206, 103 S. Ct. 1195, 75 L. Ed. 2d 439 (1983) 3

Statutes

All Writs Act, 28 U.S.C. § 1651(a)(1976) 1, 3

Supreme Court Rules

Sup. Ct. R. 17.1 2

IN THE

Supreme Court of the United States

OCTOBER TERM, 1985

No. 85-906

In Re:

ANTHONY R. MARTIN-TRIGONA,

Petitioner,

ANTHONY R. MARTIN-TRIGONA,

Petitioner,

-against-

HAROLD LAVIEN, *et al.*

Respondents.

ANTHONY R. MARTIN-TRIGONA,

Petitioner,

-against-

WILLIAM F. SMITH, *et al.*

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR RESPONDENTS IN OPPOSITION

RELEVANT STATUTE

The relevant statute not cited by Petitioner is the All Writs Act, 28 U.S.C. 1651(a)(1976), which reads as follows:

> The Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law.

SUMMARY OF ARGUMENT

This case is inappropriate for review on writ of certiorari. No "special and important reasons" for granting review are presented, the decision is not in conflict with those of this Court or other federal courts of appeal, and there are no important questions of federal law which have not been or should be settled by this Court.

To the contrary, the injunction issued by the District Court and affirmed by the Court of Appeals was necessary and proper in order to protect both the public and the efficient administration of justice from a vexatious litigant.

ARGUMENT

I.

PETITIONER FAILS TO SATISFY THE STANDARDS GOVERNING REVIEW ON CERTIORARI

Rule 17.1 of the Rules of the Supreme Court of the United States provides: "A review on writ of certiorari is not a matter of right, but of judicial discretion and will be granted only when there are special and important reasons therefor." In the instant case, Petitioner has not stated any such reasons for granting the writ.

In this regard, Rule 17.1 further provides that certiorari should be considered when a decision of a federal court of appeals is in conflict with another federal court of appeals, Sup. Ct. R. 17.1(a), or a federal court of appeals has decided an important issue of federal law which should be considered by the Supreme Court. Sup. Ct. R. 17.1(c). The injunction issued in this case is consistent with well-established principles of constitutional law and federal jurisdiction and does not merit review by this Court.

II.

DISTRICT COURTS HAVE THE AUTHORITY AND POWER TO ENJOIN VEXATIOUS LITIGANTS

It is well settled that a federal court has the equity power under the All Writs Act, 28 U.S.C. § 1651(a) (1976), to issue an injunction against vexatious litigants. *Matter of Hartford Textile Corp.*, 681 F.2d 895, 897 (2d Cir, 1982), *cert. denied.*, 459 U.S. 1206, 103 S. Ct. 1195, 75 L. Ed. 2d 439 (1983); *Green* v. *Warden*, 699 F.2d 364, 367-68 (7th Cir.), *cert. denied*, 461 U.S. 960, 103 S. Ct. 2436, 77 L. Ed. 2d 1321 (1983). The traditional basis for an injunction in federal courts is a showing by the party seeking the injunction that it will suffer an irreparable injury and that there is no adequate remedy at law. *Beacon Theatres, Inc.* v. *Westover*, 359 U.S. 500, 506-07, 79 S. Ct. 948, 954-55, 3 L. Ed. 2d 988, 995 (1954). These standards do not apply, however, when it is shown that a litigant has continuously instituted and pursued lawsuits which are frivolous and meritless and "have resulted in vexation, harassment and needless expense to [other parties] and have placed an unnecessary burden on the courts and their supporting personnel." *Matter of Hartford Textile Corp.*, 681 F.2d at 897.

In the instant case, the District Court made specific findings of fact which showed that in the bankruptcy actions pending in that Court alone, Petitioner had: (1) prevented the fair and efficient administration of the bankruptcy estate; (2) used legal processes solely to harass parties to federal litigation, their counsel, judicial personnel, and their families; (3) deprived such adverse parties of their right to unimpaired access to the federal courts and to efficient administration of claims asserted under federal law; and, (4) injured all litigants and potential litigants in the District Court by diverting considerable judicial resources to his voluminous litigation.

Therefore, injunctive relief was appropriate and necessary in order to protect both those parties who had been repeatedly harassed by Petitioner and the jurisdiction of the federal courts. Petitioner's arguments that the injunction was merely used to

brandish him an "anti-semite" and was motivated by judicial spite (Petition, pp. 7-8) are without merit. It is apparent that the injunction was both warranted by the record and issued in accordance with the authority vested in the federal courts.

CONCLUSION

Based upon the foregoing, the petition for a writ of certiorari should be denied.

Respectfully Submitted,

D'AMATO & LYNCH
Attorneys for Respondents
Daniel Meister, Richard
Belford and Richard Coan
70 Pine Street
New York, New York 10270
(212) 269-0927

Of Counsel
ROBERT E. MESHEL
WILLIAM K. SANDERS